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 AZ CORP COMMISSION  
 DOCUMENT CONTROL

March 29, 2002

 Arizona Corporation Commission  
 Docket Control – Utilities Division  
 1200 West Washington Street  
 Phoenix, AZ 85007

 Arizona Corporation Commission  
**DOCKETED**

APR 01 2002

Re: ACC Docket No. T-00000A-00-0194

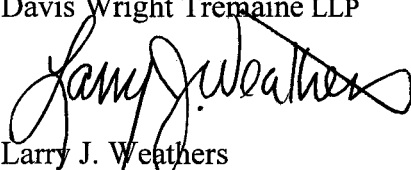
DOCKETED BY	
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Dear Docket Control:

Enclosed for filing are the original and ten (10) copies of AT&T Communications of the Mountain States, Inc.'s, *Motion to Strike Post-Hearing "Statement" Submitted by Qwest*, in the above-referenced matter. If you have any questions, please contact me at the phone number, or e-mail address, above.

Very truly yours,

Davis Wright Tremaine LLP

  
 Larry J. Weathers  
 Paralegal

Enclosures

 cc: Mary Steele  
 Rick Wolters  
 David Miller, ATT  
 Gregory Hoffman, ATT  
 Caroline Butler, ACC

**BEFORE THE ARIZONA CORPORATION COMMISSION**

**WILLIAM A. MUNDELL**  
**Chairman**  
**JAMES M. IRVIN**  
**Commissioner**  
**MARC SPITZER**  
**Commissioner**

<b>IN THE MATTER OF INVESTIGATION</b>	)	
<b>INTO U S WEST COMMUNICATIONS,</b>	)	
<b>INC.'S COMPLIANCE WITH CERTAIN</b>	)	
<b>WHOLESALE PRICING REQUIREMENTS</b>	)	<b>DOCKET NO. T-00000A-00-0194</b>
<b>FOR UNBUNDLED NETWORK</b>	)	
<b>ELEMENTS AND RESALE DISCOUNTS</b>	)	<b>MOTION TO STRIKE POST-</b>
	)	<b>HEARING "STATEMENT"</b>
	)	<b>SUBMITTED BY QWEST</b>

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**I. INTRODUCTION**

With its Exceptions to the March 8, 2001 Supplement to the Recommended Opinion and Order ("ROO") in this proceeding, Qwest has submitted a "Statement" by Harry M. Shooshan III arguing that the rates adopted by the ROO are too low. The record in this proceeding closed on July 31, 2001. Mr. Shooshan did not testify during the hearing and no party has been able to test or cross-examine his "Statement." More to the point, Mr. Shooshan's "Statement" is riddled with misleading, inaccurate, and irrelevant assertions that are unsupported by any evidence in the record. Essentially, Mr. Shooshan asks the Commission to ignore the evidence, the law, and the findings of the Administrative Law Judges and instead just "do the right thing." AT&T Communications of the Mountain States, Inc. ("AT&T") respectfully submits that the

Commission can and should “do the right thing” by deciding this matter based on the facts and the law, not the misleading ruminations, innuendos, and implicit threats of Qwest’s last-minute expert. Because Mr. Shooshan’s “statement” is an improper attempt to influence the Commission and is entirely unsupported by the record, AT&T respectfully requests that the Commission strike the Shooshan Statement filed by Qwest.

## II. DISCUSSION

On July 31, 2001, Qwest completed its rebuttal case in this proceeding. At that point, the record was closed. Now, eight months later, Qwest has filed what it terms a “Statement” by Harry M. Shooshan III, an attorney. This “Statement” asserts, *with no record basis whatsoever*, that the rates proposed by the ROO are too low, and that this Commission should “do the right thing” and adopt higher rates. Shooshan Statement at 11.

Qwest’s new “Statement” is an improper attempt to inject misleading, inaccurate, and irrelevant “evidence” into the record after the record has closed—“evidence” that will not be subjected to discovery or cross-examination. This is not permitted. The Commission’s procedural rules provide that all testimony presented in a formal hearing will be under oath and subject to cross-examination. ACC R14-3-109(F), (G). Moreover, “[o]nce a party has rested his case, he shall not be allowed to introduce further evidence without consent of the hearing officer.” *Id.* There is good reason for this rule. If parties were permitted to supplement the record at their own whim, other parties would be prejudiced and the Commission would never be able to complete its task of reviewing the evidence presented.

Qwest failed to seek permission from the Commission to present this “statement.” Moreover, Qwest has not provided the Commission with any excuse for its failure to produce Mr. Shooshan as a witness in a timely manner before the record in this proceeding closed. There is no basis for permitting Qwest to file this “statement.” No party has had any opportunity to

conduct discovery or cross-examination on Mr. Shooshan's "statement." Permitting Qwest to present this "statement" into the record now will prejudice the other parties in this proceeding. The Commission's procedural rules are designed to prevent this prejudice and the Commission should apply those rules in rejecting Qwest's late attempt to supplement the record.

Given the opportunity, AT&T could and would conclusively rebut the unsupported assertions set forth in the "statement." However, this would only further delay a final decision in this matter, further harm AT&T and other potential competitors burdened with inflated unbundled network element rates, and thus further delay the advent of local competition in Arizona. Consequently, AT&T respectfully requests the "statement" be stricken from the record.

Even if the Commission elects to review the late-filed "statement" submitted by Qwest, it should give that "statement" no weight. Mr. Shooshan states that rates compliant with TELRIC depend on a number of factors and cannot be determined with precision. *See Shooshan Statement at 2. Mr. Shooshan admits he has made no effort to evaluate any of the factors he identifies or any of the cost models presented in this proceeding. Id. at 3.* Nevertheless, with no basis, Mr. Shooshan inexplicably concludes that the rates adopted by the ROO are "sharply below" TELRIC. *Id.*

Unlike Mr. Shooshan, the Administrative Law Judges in this proceeding *did* review all of the factors that go into determining rates under TELRIC and *did* review in detail all the cost models filed by the parties. The ROO adopts rates that substantially *exceed* those proposed by the competitive carriers in this proceeding and thus substantially *exceed* TELRIC. In fact, Mr. Shooshan's statement even ignores evidence presented by Qwest itself that a reasonable TELRIC range for the unbundled loop falls below that adopted by the ROO. *See Ex. Qwest 8 (Fleming Rebuttal) at 27.*

Qwest has filed the Shooshan Statement without regard to Commission procedure in a last-ditch effort to unduly influence the Commission's deliberations on the Administrative Law Judge's ROO. Such conduct cannot be condoned. If Qwest is allowed to submit such a statement at this stage of the proceeding, the Commission's rules, as well as the role of the Administrative Law Judge, will be undermined. It will also send a message to Qwest that it need not adhere to Commission rules. Indeed, it will send a message that there is no need to conduct proceedings to ascertain facts and properly apply the law to them.

### III. CONCLUSION

For the above reasons, AT&T requests that the Commission strike from the record the "Statement" of Harry M. Shooshan III.

Dated this 24th day of March, 2002.

#### AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.

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Attorneys for AT&T Communications of the  
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## CERTIFICATE OF SERVICE

ACC Docket No. T-00000A-00-0194

I hereby certify that on the 29th day of March 2002, the original and ten (10) copies of AT&T Communications of the Mountain States, Inc.'s, ***Motion to Strike Post-Hearing "Statement" Submitted by Qwest***, in the above-referenced docket, were sent for filing via FedEx, next business morning delivery, to:

Arizona Corporation Commission  
Docket Control – Utilities Division  
1200 West Washington Street  
Phoenix, AZ 85007

And, I further certify that on the 29th day of March 2002, a true and correct copy of the above was sent via FedEx, next business morning, to:

Lynn Farmer Chief Hearing Officer Hearing Division Arizona Corporation Commission 1200 West Washington Street Phoenix, AZ 85007	Dwight D. Nodes Administrative Law Judge Hearing Division Arizona Corporation Commission 1200 West Washington Street Phoenix, AZ 85007
Maureen Scott Legal Division Arizona Corporation Commission 1200 W. Washington Street Phoenix, AZ 85007	Ernest G. Johnson Director – Utilities Division Arizona Corporation Commission 1200 West Washington Street Phoenix, AZ 85007
Timothy Berg Fennemore Craig, P.C. 3003 North Central Avenue, Suite 2600 Phoenix, AZ 85012-2913	John M. Devaney Perkins Coie LLP 607 Fourteenth Street, NW, Suite 800 Washington, DC 20005-2011

And, I further certify that on the 29th day of March 2002, a true and correct copy of the above was sent via U S Mail, postage prepaid, to:

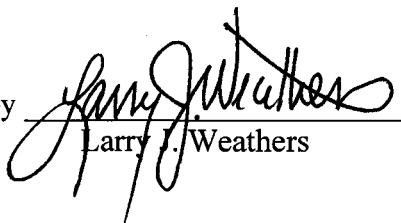
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Dated this 29th day of March, 20002

by

  
Larry J. Weathers